

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:93-CR-00123-F-3

UNITED STATES OF AMERICA,)	
)	
v.)	<u>ORDER</u>
)	
JOHN LEE BOYD, JR.,)	
Defendant.)	

This matter is before the court on John Lee Boyd, Jr.'s Motion Pursuant to Fed.R.Civ.P. 60(d)(3) to Set Aside a Judgment Based on Fraud Upon the Court [DE-149]. Boyd argues that at least five of the officers involved in his case committed fraud upon the court by fabricating evidence, which resulted in an unconstitutional indictment, his guilty plea and conviction, and an unjust thirty-year sentence.

Boyd is attacking the validity of his conviction and sentence, and the appropriate avenue to bring this challenge is by way of a § 2255 motion.¹ In this case, Boyd had a § 2255 motion that was dismissed on March 31, 1997. [DE-38.] Thus, in essence, Boyd's Motion Pursuant to Fed.R.Civ.P. 60(d)(3) to Set Aside a Judgment Based on Fraud Upon the Court is a successive § 2255 motion.

Pursuant to 28 U.S.C. § 2244(b)(3)(A), "[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application."


¹Section 2255 states four grounds upon which such relief may be claimed: (1) that the sentence was imposed in violation of the Constitution or laws of the United States; (2) that the court was without jurisdiction to impose such sentence; (3) that the sentence was in excess of the maximum authorized by law; and (4) that the sentence is otherwise subject to collateral attack. 28 U.S.C. § 2255(a).

Accordingly, Boyd must first obtain an order from the Fourth Circuit Court of Appeals before this court will consider any successive petition under 28 U.S.C. § 2255.

Based on the foregoing, Boyd's Motion Pursuant to Fed.R.Civ.P. 60(d)(3) to Set Aside a Judgment Based on Fraud Upon the Court [DE-149] is DISMISSED. The undersigned further concludes that Boyd has not made the requisite showing to support a certificate of appealability. Therefore, a certificate of appealability is DENIED.

SO ORDERED.

This, the 28th day of June, 2013



James C. Fox
Senior United States District Judge